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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re	)	Case No. 10-4-7902 RN 13
	)	
ROBERT BAKOVIC and	)	<b>MOTION TO VALUE REAL PROPERTY</b>
AMELA BAKOVIC,	)	<b>AND TO VALUE FOURTH DEED OF TRUST LIEN</b>
	)	<b>OF CHASE BANK AT ZERO DOLLARS</b>
Debtors.	)	
_____	)	

Debtors, ROBERT BAKOVIC and AMELA BAKOVIC, by and through their attorney move this Court for an order valuing at zero dollars the fourth deed of trust lien of JP Morgan Chase Bank, NA (Herein "Chase Bank") encumbering real property commonly referred to as 4324 Omega Ave., Castro Valley, California. (Herein referred to as the "Chase Bank Fourth Deed of Trust Lien") In addition, Debtors will move the Court for an order treating any claim filed by Chase Bank based on the Chase Bank Fourth Deed of Trust Lien as an unsecured claim.

This Motion is made pursuant to 11 U.S.C. §506(a) and Bankruptcy Rule 3102.

The Motion is based on the following:

1. Debtors filed a Chapter 13 Bankruptcy on July 13, 2010.

- 1        2.    The debtors' real property at 4324 Omega Ave., Castro  
2        Valley, California (Hereinafter referred to as the  
3        "Residence") is encumbered by the following liens:  
4        a)    First Deed of Trust recorded in July 2003 in favor  
5        of CitiMortgage in the amount of \$257,288.04;  
6        b)    Second Deed of Trust recorded in November 2004 in  
7        favor of Ameriprise Bank FSB in the amount of  
8        \$39,503.75;  
9        c)    Third Deed of Trust recorded in March 2006 in  
10       favor of Wilshire State Bank in the amount of  
11       \$181,556.76; and  
12       d)    Fourth Deed of Trust recorded on or about July 23,  
13       2007 in favor of Chase Bank in the amount of  
14       \$178,064.81.
- 15       3.    The fair market value of Debtor's Residence is  
16       \$445,000.00.
- 17       4.    Debtor's Residence is worth less than what is currently  
18       owed to the deed of trust holders, to wit,  
19       CitiMortgage, Ameriprise FSB and Wilshire State Bank.  
20       The liens of CitiMortgage, Ameriprise FSB and Wilshire  
21       State Bank were recorded prior to, and therefore are  
22       superior to, the Chase Bank Fourth Deed of Trust Lien.  
23       The Chase Bank Fourth Deed of Trust Lien is entirely  
24       "underwater," unsecured and of no secured value.
- 25       5.    Any claim filed by Chase Bank predicated on the Chase  
26       Bank Fourth Deed of Trust Lien is wholly unsecured.
- 27       6.    The Chase Bank Fourth Deed of Trust Lien should  
28       therefore be valued pursuant to 11 USC §506(a) and

1 Bankruptcy Rule 3012 at zero dollars. Any claim filed  
2 by Chase Bank predicated on the Chase Bank Fourth Deed  
3 of Trust Lien should be paid as a general unsecured  
4 claim in Debtor's Chapter 13 Plan. See In Re Zimmer  
5 313 F<sup>3d</sup> 1220, 1222-1225 (9<sup>th</sup> Circ 2002).

6 7. The Ninth Circuit ruling in In re Zimmer allowing a  
7 wholly unsecured junior lien claim to be stripped from  
8 Debtors' principal residence is in harmony with all of  
9 the other Circuit decisions which have considered the  
10 issue. See In re Lane 280 F<sup>3d</sup> 606, 615 (6<sup>th</sup> Circ.  
11 2002); In re Tanner 217 F<sup>3d</sup> 1357 (11<sup>th</sup> Circ. 2000); In  
12 re Mann 249 BR 831 (BAP 1<sup>st</sup> Circ 2000); In re Bartee  
13 212 F<sup>3d</sup> 277(5<sup>th</sup> Circ. 2000).

14 8. Bankruptcy Rule 3012 provides that the "valuation of  
15 security" may be done by hearing after notice and  
16 therefore valuing the lien at zero dollars by this  
17 motion is in accord with Bankruptcy procedure.

18 WHEREFORE, Debtor prays for an order pursuant to 11 USC  
19 §506(a) and Bankruptcy Rule 3012 as follows:

- 20 1. The real property at 4324 Omega Ave., Castro Valley,  
21 California is valued at \$445,000.00;
- 22 2. The Chase Bank Fourth Deed of Trust Lien is unsecured  
23 in its entirety and any claim predicated on the Chase  
24 Bank Fourth Deed of Trust Lien shall be treated as an  
25 unsecured claim;
- 26 3. The Chase Bank Fourth Deed of Trust Lien may not be  
27 enforced pursuant to 11 U.S.C. §§506, 1322(b)(2) and  
28 1327;
4. The Court's ruling on this Motion shall become part of

Debtor's confirmed Chapter 13 Plan.

5. Upon successful completion of Debtor's Chapter 13 Plan and entry of a Chapter 13 Discharge, the Chase Bank Fourth Deed of Trust Lien shall be voided for all purposes and upon application by Debtor, the Court will enter an appropriate form of judgment voiding the Chase Bank Fourth Deed of Trust Lien.

LAW OFFICES OF CRAIG V. WINSLOW

9/14/2010

/s/ Craig V. Winslow

Dated: \_\_\_\_\_

By \_\_\_\_\_

CRAIG V. WINSLOW  
Attorney for Debtors